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David L. Wilkinson; Attorney General; Attorney for Respondent.

Brooke C. Wells; Christopher Kerecman; Salt Lake Legal Defender Assoc.; Attorneys for Appellant.

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UTAH BRIEF

UTAH
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DOCKET NO. 20557



THE ATTORNEY GENERAL

STATE OF UTAH

DAVID L. WILKINSON
ATTORNEY GENERAL

FILED

OCT 16 1986

Clerk, Supreme Court, Utah

PAUL M. TINKER
CHIEF DEPUTY ATTORNEY GENERAL

DALLIN W. JENSEN
Solicitor General

WILLIAM T. EVANS, CHIEF
Human Resources Division

DONALD S. COLEMAN, CHIEF
Physical Resources Division

EARL F. DORIUS, CHIEF
Governmental Affairs Division

October 16, 1986

PAUL M. WARNER
ASSOCIATE DEPUTY ATTORNEY GENERAL

STEPHEN G. SCHWENDIMAN, CHIEF
Tax & Business Regulation Division

STEPHEN J. SORENSON, CHIEF
Litigation Division

MICHAEL D. SMITH, CHIEF
Civil Enforcement Division

Mr. Geoffrey J. Butler
Clerk of the Utah Supreme Court
332 State Capitol
Salt Lake City, Utah 84114

Re: State v. Branch, Case No. 20557

Dear Mr. Butler:

I wish to cite to the Court Instruction No. 14 (R. 183) as additional support for the State's position, taken during oral argument, that other instructions cured any possible fifth amendment problem with Instruction No. 19. See Point III of Brief of Respondent at 11-13. Instruction No. 14 provided:

The law expressly gives each defendant the privilege of remaining silent at all stages of any proceedings against him. The fact that he has not taken the witness stand must not be considered as any indication of defendant's guilt, nor should you indulge in any presumption or inference adverse to defendant by reason thereof. The burden remains with the State to prove, by evidence, guilt beyond a reasonable doubt.

During oral argument, I mistakenly read Instruction No. 13 to the Court instead of this instruction.

Also, I wish to cite to the Court Utah Code Ann. § 76-4-101(3)(a) (1978) as support for the State's argument in Point IV of its brief that, although the evidence may show a completed robbery, a finding of attempted robbery is not precluded. Brief of Respondent at 22.

Mr. Geoffrey J. Butler
October 26, 1986
Page 2

This supplemental authority is submitted pursuant to
Utah R. App. P. 24(j).

Sincerely,

A handwritten signature in cursive script that reads "David B. Thompson". The signature is fluid and elegant, with a long, sweeping tail on the final "n".

DAVID B. THOMPSON
Assistant Attorney General
Governmental Affairs Division

DBT/rew

cc: Brooke Wells